

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL LITTLE,

Petitioner,

v.

Case No. 08-CV-12794

CARMEN PALMER,

Respondent.

**ORDER GRANTING PETITIONER'S "MOTION FOR ENLARGEMENT OF TIME" AND
DENYING PETITIONER'S "MOTION FOR PARTIAL SUMMARY JUDGMENT"**

Petitioner Michael Little, a state inmate currently incarcerated at the Michigan Reformatory in Ionia, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. # 1.) Now before the court are the following motions: "Motion for Partial Summary Judgment" and "Motion for Enlargement of Time File [sic] Objection." (Dkt. ## 9, 11.) Because Petitioner's motion for partial summary judgment alleges Respondent failed to file a response within the allotted time period, the court construes Petitioner's motion for partial summary judgment as a motion for default. For the reasons stated below, the court grants Petitioner's request for enlargement of time and denies his motion for default judgment as moot.

Petitioner filed his petition on June 30, 2008. The court ordered Respondent to file a response to the petition by January 9, 2009. Respondent did not file a response but rather filed a motion to dismiss the petition for failure to comply with the statute of limitations. Pursuant to the court's July 14, 2008, order, Petitioner was to be given forty-five days from Respondent's response to file his reply. (Dkt. # 2.) Petitioner now seek

additional time to address Respondent's motion to dismiss. The court finds that Respondent will not be prejudiced by allowing Petitioner further time and will grant Petitioner until March 25, 2009, in which to file his response to Respondent's motion.

Further, Respondent's motion to dismiss for failure to comply with the statute of limitations is similar to a motion to dismiss under Federal Rule of Civil Procedure 12(b). As such, it challenges this court's jurisdiction to hear the matter and is properly brought prior to any responsive pleading. Fed. R. Civ. P. 12(b); see, e.g., *Crystal Clear Imaging, Ltd. v. Siemens Med. Solutions, Inc.*, No. 07-CV-441, 2008 WL 2114867, *5 (S.D. Ohio May 19, 2008). Thus, the court will deny Petitioner's motion for partial summary judgment – in effect a motion for default judgment – as moot, because Respondent filed a motion to dismiss on January 9, 2009, prior to the time its responsive pleading was due. Accordingly,

IT IS ORDERED that Petitioner's "Motion for Enlargement of Time File [sic] Objection" [Dkt. # 11] is GRANTED. Petitioner must submit his response to Respondent's motion on or before **March 25, 2009**. If the court has not received Petitioner's response by that time, the court will consider Respondent's motion unopposed.

IT IS FURTHER ORDERED that Petitioner's "Motion for Partial Summary Judgment" [Dkt. # 9] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 3, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 3, 2009, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522